

STATE OF MICHIGAN  
COURT OF APPEALS

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KENNETH ALLEN WOOSTER,

Plaintiff/Counter-Defendant-  
Appellee,

v

LAURIE LYNN WOOSTER,

Defendant/Counter-Plaintiff-  
Appellant.

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UNPUBLISHED  
April 21, 2015

No. 320890  
Alpena Circuit Court  
LC No. 13-005501-DO

Before: BORRELLO, P.J., and RONAYNE KRAUSE and RIORDAN, JJ.

PER CURIAM.

In this divorce action, defendant/counter-plaintiff Laurie Wooster (defendant), appeals as of right the circuit court's March 10, 2014, judgment as it pertains to the division of the marital estate, spousal support, and attorney fees. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

At the time of the divorce, plaintiff/counter-defendant Kenneth Allen Wooster (plaintiff) was 81 years of age and defendant was 61 years of age. The parties were married on October 22, 1976. At the time of the marriage, plaintiff owned and lived on an 80-acre horse farm in Alpena County and had two children from a different marriage. Sometime after marrying, the parties conveyed 42 acres of the farm and lived and worked on the remaining 38 acres for approximately 37 years during the marriage. The parties raised and boarded horses together at the farm, but they did not earn a profit. Initially, plaintiff worked fulltime at Stoneport Lafarge, a cement plant, while defendant stayed home and worked on the farm. Defendant helped take care of the horses and also gave riding lessons. The parties also had a child together. In 1997, plaintiff retired from Stoneport after 43 years' employment and began drawing a pension.

In August 2013, plaintiff was recovering from hip-replacement surgery and required a walker to ambulate. According to plaintiff, at or about that time, the marriage began to break down because of defendant's fits of violence. Plaintiff testified that on August 5, 2013, defendant shoved his walker into him and plaintiff became worried for his safety. Plaintiff called his adult son to come pick him up and defendant stayed at the farmhouse.

On August 14, 2013, plaintiff commenced this divorce action. During a portion of the divorce proceedings, defendant stayed at the farmhouse while plaintiff was with his son. Defendant was ordered to vacate the property and plaintiff moved back into the home on October 9, 2013 and paid defendant \$900 a month in temporary alimony. Plaintiff explained that defendant “stripped” the home while he was away. Plaintiff testified that numerous documents related to the farm and other business transactions including the titles to trucks and trailers and paperwork for the horses were thrown into a dumpster with numerous other household and personal items. Plaintiff explained that defendant poured antifreeze over the items in the dumpster so that they were not recoverable. Plaintiff testified that he wanted to remain at the farm because that is where he had lived since 1954 and the farm was the only thing he had known for 60 years. Plaintiff stated that he would buy-out defendant’s share of the property and he agreed that defendant could keep her three horses and take one-half of all of the tack that the parties accumulated during the marriage. Plaintiff testified that he paid all of the bills during the marriage, while defendant kept the money she earned from riding lessons to herself. Plaintiff agreed however that he shared a joint-account with defendant that included a \$200,000 inheritance that defendant received from her parents. The parties agreed to divide the liquid assets so that each would receive \$107,000. Plaintiff testified that his pension and Social Security benefits amounted to a monthly income of \$2,296.

Defendant testified that she lived on the farm for the 37 years of marriage in addition to 4 or 5 years beforehand when she had a relationship with plaintiff. Defendant testified that she had a high-school education and worked full-time on the farm the entire time she was married. Defendant explained that she cared for the horses and gave riding lessons, although she had not given any riding lessons the previous two years. Defendant testified that she did the physical labor at the farm even after plaintiff retired in 1997. Defendant testified that she was in excellent health and wanted to continue working and living at the farm. Defendant stated that she would agree to share a portion of the farm so that she could continue to use the buildings at the farm and maintain her horses there. Defendant testified that without at least a share of the property, she had no way to earn a living. Defendant denied that she was ever physically violent toward plaintiff. Defendant explained that she threw things into a dumpster because she needed to prepare the house for sale following a court order. She denied dumping anti-freeze over the items in the dumpster.

Following a one-day bench trial, the circuit court entered an opinion and order on February 3, 2014, dividing the property. The court awarded the farm to plaintiff, noting that plaintiff “bought the farm and lived there for a period of 21 years prior to his marriage to Defendant.” The court noted that the farm had no debt and had a value of \$150,000 based on exhibits introduced at trial. The court ordered that the full equity in the farm be equally divided between the two parties and made no set-off for the premarital value of the farm. The court awarded other personal property as follows:

The Court FURTHER AWARDS Plaintiff the 2003 Dodge pickup valued at \$10,425.00, seven horses . . . valued at \$6,600.00; a golf cart valued at \$800.00; a 2001 New Holland tractor and loader valued at \$8,750.00; 1988 Southwind motor home valued at \$5,000.00; a 1996 Jet Ski and trailer valued at \$750.00; 1,000 bales of hay valued at \$350; all tools located on the farm, and all weapons the parties owned or possessed prior to their separation. [Footnote omitted.]

The Defendant is AWARDED a certain 1991 Chevrolet pickup which has a value of \$2,700.00, and a certain Buick sedan which has a scrap value of \$250.00; three horses . . . having a value of \$9,750.00; a certain Farmall C tractor; a certain horse trailer having a value of \$30,000.00.

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The Court had previously awarded exclusive possession of the farm to Plaintiff at the inception of this action. Upon the appointed date that the Defendant was to vacate the farm, she refused to do so, and when she was finally removed from the premises, she had left the farmhouse in a “stripped condition.” Much of the parties’ documents and personal effects were destroyed or concealed from Plaintiff. Show cause proceedings were requested by Plaintiff. This Court finds that the Defendant’s conduct is grievous enough to forfeit any right she may have to the remaining personality at the farm. [This ruling does not apply to the antiques that were given to Defendant by her family and are located at the farm.] This is the only remedy the Court can fashion to address the Plaintiff’s claim of missing items. [Footnote included in body of text in brackets.]

The court awarded defendant a 21-year share of plaintiff’s pension and ordered that a QDRO be prepared reflecting as much. The court ordered plaintiff to continue paying spousal support of \$900 per month until plaintiff redeemed defendant’s equitable interest in property awarded to plaintiff, which at that point plaintiff would be required to pay \$450 spousal support per month.

The court entered a judgment of divorce on March 10, 2014 further specifying division of the marital property. The court clarified that plaintiff was to pay defendant \$69,988 for redemption at the time defendant quitclaimed her title to the farm. The court also incorporated into the judgment a stipulated settlement wherein the parties agreed that they would each receive approximately \$107,000 in liquid assets and that marital debt of \$21,290.92 was to be paid off. Defendant appeals the judgment as of right.

## II. ANALYSIS

### A. PROPERTY DIVISION

On appeal, defendant contends that the circuit court erred in its division of both the real and personal property because the court failed to analyze the factors set forth in *Sparks v Sparks*, 440 Mich 141; 485 NW2d 893 (1992). Defendant contends that the property division was inequitable.

In a divorce action, this Court begins its review of a property division “by first reviewing the trial court’s factual findings for clear error.” *Olson v Olson*, 256 Mich App 619, 622; 671 NW2d 64 (2003). “Findings of fact are clearly erroneous when this Court is left with the definite and firm conviction that a mistake has been made.” *Hodge v Parks*, 303 Mich App 552, 555; 844 NW2d 189 (2014) (quotation marks and citation omitted). Following our review of the facts, we then must determine “whether the dispositional ruling was fair and equitable in light of the facts.” *Olson*, 256 Mich App at 622. “The court’s dispositional ruling should be affirmed

unless this Court is left with the firm conviction that the division was inequitable.” *Pickering v Pickering*, 268 Mich App 1, 7; 706 NW2d 835 (2005).

In a divorce proceeding, a trial court must divide marital property between the parties, and to do so the court must first determine which property is marital and which property is separate. *Reeves v Reeves*, 226 Mich App 490, 493–494; 575 NW2d 1 (1997). “Generally, marital property is that which is acquired or earned during the marriage, whereas separate property is that which is obtained or earned before the marriage.” *Cunningham v Cunningham*, 289 Mich App 195, 201; 795 NW2d 836 (2010), citing MCL 552.19. However, separate assets may become marital property if the assets are commingled with marital assets and are treated as marital property by the parties. *Pickering*, 268 Mich App at 12-13. Furthermore, a court may award a party “all or a portion” of separate property “owned by his or her spouse, as appears to the court to be equitable under all the circumstances of the case, if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property.” MCL 552.401. A trial court should consider the following non-exclusive factors in making an equitable division of property:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. [*Sparks*, 440 Mich at 160.]

The trial court erred when it did not make specific findings with respect to the relevant *Sparks* factors. However, this Court will not reverse a judgment on the basis of a harmless error. MCR 2.613(A). Here, the court considered some of the *Sparks* factors in its opinion and the court’s division of property was equitable under the circumstances. In its opinion, the court noted the duration of the parties’ marriage and considered that both parties contributed to the marital estate and were devoted to the farm and the horses. The court considered the age, health and life situation of the parties, noting that defendant had no independent income source, but would qualify for Social Security benefits in July 2014 in the amount of either \$650 or \$740 per month. The court considered that plaintiff enjoyed a pension and Social Security benefits in the amount of \$2,296 per month. Based on comments at the trial and language in the judgment of divorce, the court was aware that both parties stipulated to split the liquid assets of the estate, each receiving \$107,000. The court also considered that plaintiff lived at the farm for 21 years before the parties were married. This factor was significant in the court’s determination that it was equitable to award the farm to plaintiff, while awarding defendant one-half of the appraised value of the farm for her continued support. The court also took the conduct of the parties into account. In particular, the court noted that defendant left the farmhouse in a “stripped condition” resulting in plaintiff’s loss of many of his personal items.

Defendant argues that the court left her with no means of earning a living when it awarded the farm to plaintiff. However, the evidence does not support this assertion. At trial defendant testified that she had not given riding lessons for the previous two years and testimony showed that the farm never earned a profit. Given the totality of the circumstances, we are not left with a firm conviction that the property division was inequitable. *Pickering*, 268 Mich App at 7.

## B. SPOUSAL SUPPORT

Next, defendant argues that the circuit court erred when it reduced the award of spousal support from \$900 per month to \$450 per month.

In reviewing an award of spousal support, findings of fact are reviewed for clear error. *Korth v Korth*, 256 Mich App 286, 288; 662 NW2d 111 (2003). If the court's findings of fact are upheld, we must then determine "whether the dispositive ruling was fair and equitable in light of those facts." *Id.* (quotation marks and citations omitted). Dispositional rulings, including whether and how much alimony to award, "should be affirmed unless the appellate court is left with a firm conviction that the decision was inequitable." *Id.*

"A trial court has discretion to grant spousal support. . . ." *Id.*, citing MCL 552.23. "Spousal support is to be based on what is just and reasonable under the circumstances of the case." *Id.* at 289. A trial court should consider the following non-exclusive factors in determining what is just and reasonable under the circumstances:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. [*Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).]

"The trial court should make specific factual findings regarding the factors that are relevant to the particular case." *Korth*, 256 Mich App at 288. The primary purpose of spousal support "is to balance the incomes and needs of the parties in a way that will not impoverish either party." *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

In this case, the circuit court reduced defendant's spousal support from \$900 to \$450, stating as follows:

The Court had previously awarded temporary alimony in the amount of \$900 per month, payable by the Plaintiff to Defendant. The Court ORDERS that this temporary alimony shall continue at the identical rate until such time as the Plaintiff redeems the Defendant's equitable interest in the property award to him. [The net redemption shall equal one-half of the value awarded to Plaintiff after deducting one-half of the value awarded to the Defendant.] After the date of redemption, the monthly alimony shall be \$450.00 per month to the Defendant. This award is modifiable and shall be reviewed upon the Defendant's receipt of independent income. [Footnote included in body of text in brackets.]

The court erred in failing to make findings with respect to the relevant spousal support factors. *Korth*, 256 Mich App at 288. However, the error was harmless and reversal is not warranted where the spousal support award was just and reasonable under the circumstances. *Id.* at 289; MCR 2.613(A). Here, as discussed above, in dividing the property the court referenced

several factors that were relevant to the issue of spousal support. The court was aware of the parties' relevant history, needs, ages, health and other issues involved in the case. The court's award of \$450 per month was just and reasonable considering the circumstances. Neither party had substantial assets in this case and the court awarded defendant one-half of the value of the farm in cash. In addition, defendant received \$107,000 of the liquid assets and a share of plaintiff's pension. The court also noted that defendant would soon qualify for Social Security benefits. On this record, we are not left with a firm conviction that the court's spousal support award was inequitable. *Korth*, 256 Mich App at 288.

### C. ATTORNEY FEES

On August 20, 2013, defendant moved for attorney fees. On September 6, 2013, the circuit court denied defendant's motion for attorney fees, stating; "Defendant's motion for attorney fees is denied at this time. The Court shall observe the significant amount of equity the Defendant shall enjoy at the conclusion of these proceedings." Subsequently, in her trial brief, defendant again requested attorney fees in the amount of \$2,500. The court did not award attorney fees in its opinion and order dividing the property or in its final judgment of divorce. Defendant contends the court clearly erred in failing to address the issue and award attorney fees.

We review a circuit court's decision whether to award attorney fees for an abuse of discretion. *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010).

"The general rule in Michigan is that absent authorization by statute, court rule, or contract, attorney fees are not recoverable." *In re Temple Marital Trust*, 278 Mich App 122, 129; 748 NW2d 265 (2008). Defendant argues that she was entitled to attorney fees under MCR 3.206(C), which provides in relevant part as follows:

(1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that

(a) the party is unable to bear the expense of the action, and that the other party is able to pay, or

In this case, defendant did not allege facts to support that she was unable to bear the expense of the action and that plaintiff was able to pay. Here, plaintiff did not have substantial assets and defendant received approximately \$107,000 in the division of the liquid assets in addition to a cash distribution for her share in the equity of the farm. Moreover, the court awarded defendant a share of plaintiff's pension and spousal support and defendant qualified for

Social Security benefits in July 2014. The court did not abuse its discretion in denying defendant's request for attorney fees. *Stoudemire*, 248 Mich App at 344.<sup>1</sup>

Affirmed. No costs awarded to either party. MCR 7.219(A).

/s/ Stephen L. Borrello  
/s/ Amy Ronayne Krause  
/s/ Michael J. Riordan

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<sup>1</sup> Plaintiff argues that he is entitled to attorney fees "because of Defendant's egregious conduct and Defendant's superior ability to pay. . . ." Plaintiff fails to cite where in the record he requested attorney fees in the lower court; therefore the issue is not properly before this Court and we decline to address it. See *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992).